

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

RONALD WHITMIRE,

Plaintiff,

v.

GARY GRAHAM, *et al.*,

Defendants.

3:11-cv-00502-LRH-VPC

**ORDER**

November 21, 2013

This is a *pro se* prisoner civil rights action, brought pursuant to 42 U.S.C. § 1983. Plaintiff has named two Doe defendants in his amended complaint (#21). The use of Doe Defendants is not favored in the Ninth Circuit. *See Gillespie v. Civiletti*, 629 F.2d 637, 642 (9<sup>th</sup> Cir.1980). However, where the identity of alleged defendants cannot be known prior to the filing of a complaint, the plaintiff should be given an opportunity through discovery to identify them. *Id.* Failure to afford the plaintiff such an opportunity is error. *See Wakefield v. Thompson*, 177 F.3d 1160, 1163 (9<sup>th</sup> Cir.1999).

Accordingly, plaintiff shall be allowed to conduct limited pre-service discovery in an effort to ascertain the true identity of the defendants. To that end, the Attorney General will be directed to enter a limited appearance in this action for the purpose of responding to the discovery discussed herein. Plaintiff will be permitted to serve three interrogatories on the Attorney General in order to discover the identities of the Doe #1 and #2 corrections officers at High Desert State Prison. If plaintiff learns the identities of the officers who allegedly violated his rights, he shall file a notice of

1 substitution to substitute their names in place of the Doe defendants. If plaintiff is unable to learn  
2 the identity of at least one Doe defendant, this action will be dismissed without prejudice.

3 **IT IS THEREFORE ORDERED** as follows:

4  
5 1. The Clerk shall electronically serve a copy of this order, along with a copy of the  
6 complaint, on the Office of the Attorney General of the State of Nevada, to the attention of Kat  
7 Howe.

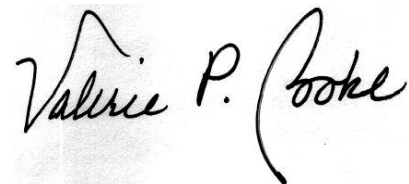
8 2. The Attorney General **SHALL ENTER AN APPEARANCE** in this action within ten  
9 (10) days of the date of entry of this order for the limited purpose of responding to limited pre-  
10 service discovery by plaintiff as set forth in this order. No responsive pleading to the complaint shall  
11 be required until further order of the court.

12  
13 4. Within thirty (30) days from the date of this order, plaintiff shall serve no more than three  
14 interrogatories on the Attorney General in order to discover the identities of the defendant  
15 corrections officers. The Attorney General shall respond to the interrogatories as provided in Fed. R.  
16 Civ. P. 33 and 37.

17  
18 **IT IS FURTHER ORDERED** that plaintiff will have thirty (30) days from the date that he  
19 is served with the Attorney General's responses to interrogatories to file his notice of substitution, if  
20 any, to provide the names of the Doe defendants.

21  
22 **IT IS FURTHER ORDERED** that plaintiff is expressly cautioned that if he does not timely  
23 file a notice of substitution in compliance with this order, this entire action will be dismissed without  
24 prejudice.

25 **DATED:** November 21, 2013.



26  
27 **UNITED STATES MAGISTRATE JUDGE**  
28